**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C. 20554**

| | |
|---|---|
| In the Matter of | ) |
| The Missouri Municipal League; | ) |
| The Missouri Association of Municipal Utilities; | ) Docket No. |
| City Utilities of Springfield; | ) |
| City of Columbia Water & Light; | ) [redacted] 98 - 122 |
| City of Sikeston Board of Utilities. | ) |
| Petition for Preemption of | ) |
| Section 392.410(7) of the | ) |
| Revised Statutes of Missouri | ) |

**ATTACHMENTS TO PETITION FOR PREEMPTION**

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July 8, 1998

# ATTACHMENT A

Statement of William E. Kennard

Chairman
Federal Communications Commission

on

The Telecommunications Act of 1996 --
Moving Toward Competition Under Section 271

Before the
Subcommittee on Antitrust, Business Rights, and Competition
Committee on the Judiciary

United States Senate

March 4, 1998

Mr. Chairman and Members of the Subcommittee.

Thank you for the opportunity to testify before the Subcommittee today. I appreciate the opportunity to report on the Federal Communications Commission's progress in fulfilling one very important aspect of the mission entrusted to us by Congress and the American people, that of overseeing the entry of the Regional Bell Companies into interLATA long distance service. Just over two years ago, when Congress passed the 1996 Telecommunications Act, the BOCs were directed to open their local telephone markets to competition as a precondition to entry into the interLATA long distance market, thereby providing the American people with the benefits of increased choice and competition in all telecommunications markets. I am here to report that we have embraced this complex and difficult responsibility, and that, in spite of delays caused by litigation, significant progress is being made.

There has been a flurry of activity since Congress passed the Act two years ago: the states have approved hundreds of interconnection agreements between incumbents and competitive carriers entering the local market; new entrants have been able to raise more than 14 billion dollars from the public markets to fund their entry into local telephony; and, in New York City, over 20% of the business market is being served by carriers other than the incumbent Bell Company. Clearly, a lot of progress has been made, though I do not come here to announce my satisfaction with the pace of competition. The pace of competition in local markets should accelerate. I would like to discuss with you today some possible strategies for speeding competition's pace.

The Goal is Consumer Choice in All Markets

The goal of the 1996 Act is to open telecommunications markets to competition. Consumers deserve to have a real choice among carriers. This means we have to eliminate barriers that discourage entry by new competitors, and eliminate barriers that discourage subscribers from switching between carriers.

Common sense tells us that competition is only truly working where real consumer choice is present and where the consumer is able to exercise certain fundamental rights. I have attempted to articulate these rights, which are consistent with the statutory provisions of section 271, in what I call a Consumer Bill of Rights:

1. Consumers must ultimately have the right to choose providers -- from as wide a variety of providers as the market will bear.

2. Consumers must be able to move seamlessly, without obstruction or delay, from one provider to another.

# ATTACHMENT B

quick study. He is right. I would add one thing. I think the National Association of Broadcasters are going to want some additional spectrum beyond what is in this bill. We will work that out. But this has been scored, and we will work that out with them as we go forward to make sure that we understand the problem.

The simple problem is that this bill could not go forward unless we within its terms meet the scoring problem that the Senator from Nebraska has outlined.

Again, I point out we are not, however, by this bill spending money for universal service. But the budget process now makes us account for those moneys we must be paid by the private sector pursuant to a mandate, and since we are continuing a mandate, partially reducing it somewhat for universal service, it will cost less than the old universal service, we now must offset it.

I think it is responsible on the part of the Government to do that because there is always the possibility some future Congress might decide not to mandate that service but require the Government to pay it.

So we have, in effect, met the challenge of the Budget Act and, in doing so, we will actually, within this period, raise the additional moneys which I believe will be utilized in offsetting other budget problems as we go along. I do not believe that will be required by any action of the Congress in the future to charge the cost of universal service to the taxpayers.

Again, in my judgment, universal service is required so someone who comes up to my State who wants to call home literally can do it, or wants to bring up a computer and be attached to data services can make that intersection with the telecommunications system of our country.

I believe sincerely in universal services because without the universal services, the villages and towns of our rural areas would be still in probably the early part of the 20th if not the 19th century while we all go into the 21st. If they are not to be left in the position where they are without employment because they cannot attach themselves to this new telecommunications miracle of the United States, then I think they will be a burden on the rest of the country.

My friend George Gilder believes that in the future, the computer will replace, in effect, the networks because the networks will become, in effect, a gigantic computer network rather than just a television network. He tells us that what is going to happen is that we are going to have access through the computer industry to interconnect America's schools and colleges in truly a new worldwide web of glass and air.

If people want to think about it, there is no way we can afford to have this bill stopped by a budget point of order. That is the reason for our amendments. I join in urging adoption of these amendments.

Mr. PRESSLER. I urge the adoption of the amendment.

Mr. HOLLINGS. First, adoption of the Pressler amendment. If there is no further debate, I urge the adoption of the Pressler amendment.

VOTE ON AMENDMENT NO. 1257

The PRESIDING OFFICER. If there is no further debate, the question occurs on agreeing to the second-degree amendment No. 1257 offered by the Senator from South Dakota, Senator PRESSLER.

The amendment (No. 1257) was agreed to.

Mr. HOLLINGS. I urge adoption of the Stevens amendment, as amended by the Pressler amendment.

VOTE ON AMENDMENT NO. 1256

The PRESIDING OFFICER. If there is no further debate on the Stevens amendment No. 1256, as amended, the question is on agreeing to the amendment.

The amendment (No. 1256), as amended, was agreed to.

Mr. PRESSLER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I wish to thank the managers of the bill and those patient with us. I thought it was essential first to proceed with these amendments. Otherwise, we would be wasting our time if a budget point of order had the effect of pulling the bill down. I thank all concerned.

Mr. LOTT. Mr. President, I inquire what the parliamentary situation is? Are we back now to making opening statements at this point?

The PRESIDING OFFICER. Opening statements are appropriate at this time.

Mr. LOTT. Mr. President, I do want to rise in support of this legislation and make an opening statement. I would like to begin, as others have already done, by congratulating and commending the distinguished Senator from South Dakota for the hard work that he has put into this legislation. Of course, many members of the committee have been working on this legislation for several months. As the distinguished former chairman said earlier, way back in 1993 there was a lot of work going on on legislation that led to this moment.

But I know from personal experience and observation that the chairman of the Commerce, Science, and Transportation Committee, Senator PRESSLER, said immediately after the election in 1994 that this is an issue that is going to be given high priority, a great deal of his attention and we were going to work together to find solutions to the problems that had prevented its consideration last year and earlier. He made a commitment also to make it a bipartisan effort. So that is why we are here, because the chairman of the committee gave this such high priority and he has worked diligently to resolve problems that had been delaying this legislation.

I just want to acknowledge that fact at the very beginning of this debate. We have a long way to go, but I know now we have started down the path toward passing this legislation. I think it is a tremendous undertaking.

This is big legislation. It is important legislation. It involves a significant part of the overall economy in this country. It is going to create jobs. It is going to raise revenue because it is going to be such a dynamic explosive field. We are fixing to unleash the bounds that have been holding back this competition and advancements and this development. I think that no other segment of the economy in the next 10 years will be more dynamic and more exciting than that of telecommunications.

I also want to commend the distinguished Senator from South Carolina who is working at this very moment to resolve potential problems on this legislation, but Senator HOLLINGS worked so hard last year to bring about the passage of the bill through the Commerce, Science, and Transportation Committee. It did not come to consideration, partially because we just ran out of time.

But Senator HOLLINGS again this year has shown a commitment to get legislation developed that we can pass. He is the major reason we are going to have bipartisan legislation. We should have more legislation like this in the Senate. This is really the first bill of the year of major import that I believe will pass by an overwhelming bipartisan vote. So many of our issues have been considered in a partisan way, have been delayed with amendments. We have had filibusters; 50 amendments on the budget resolution. But in this case, we will have a chance to develop a bill that can be bipartisan and also a bill that will pass this body first instead of the other body of Congress. That is no insignificant accomplishment.

Senator INOUYE certainly has also been very interested in telecommunications. He worked on it last year and has been helpful this year.

The indomitable Senator STEVENS from Alaska is always there. When the debate gets hot and heavy, Senator STEVENS from Alaska will always rise to the occasion, as he has on this bill.

I have one other recognition before I get into my comments. I want to recognize the staff members who have done great work, hard work. It has been laborious, tedious, and they have solved so many problems through the great efforts of Paddy Link, and my own staff assistant Chip Pickering, clearly one of the brightest young men I have known in my life. We would not be here without their help.

Let me begin with a quote from testimony before the committee earlier. It begins with a quote from a Senator from Washington State, Senator Magnuson, who served with great distinction on the Commerce, Science, and

Transportation Committee. He put it very aptly when he said in this particular area of legislation "each industry seeks a fair advantage over its rivals."

And then quoting the witness that was before the committee:

Each industry wants prompt relief so that it can enter the others' fields, but at the same time wants to avoid the pain of new competition in its own field by tactics that will delay that competition as long as possible. It is, therefore, up to the Congress to make the tough calls and, in effect, cut the Gordian knot.

That is what we are trying to do with this legislation, cut the Gordian knot that has held this dynamic field of the economy back now for several years.

As unbelievable as it sounds, the Communications Act of 1934 passed in the era of the Edsel, and it is still the current law of the land. That act now governs, in fact, constrains the most dynamic sector of the U.S. economy—telecommunications. Just as the Edsel became a symbol of all that is outdated, so is the 1934 Communications Act. That act is based on old technology and, consequently, on an outdated, rigid-monopoly-based-regulatory model. Boy, that sounds bad, but that is what we have today. It is time we changed that.

That system cannot accommodate the rapidly developing capabilities of new technologies and advanced networks. Instead, it acts to restrict competition, innovation, and investment.

Under that framework, markets are allocated, not won, by the sweat of competition. Currently monopolies, oligopolies or, at best, limited competition exist in local long distance and cable markets. More than 40 of our 50 States prohibit any entrepreneur or competitor from offering—even offering—local telephone service.

The 1984 consent decree which broke up AT&T continues to restrict the Bell operating companies from offering long distance or manufacturing.

We should have fixed that long ago. It would have created jobs and would have been positive for the economy.

Current law prohibits cable companies and telephone companies from competing in each other's markets. They are willing to do that. They want to do that. Why should we not let them do that?

Another 1934 law, the Public Utility Holding Company Act, PUHCA, prevents registered electric utilities from using their infrastructure and networks to offer telecommunication services to the 49 million American homes that they serve. All of these restrictions and regulations and allocations are truly the equivalent of an "Edsel" in the space and information age. In the case of utilities, they are already wired, hooked up. They have the capability to offer all kinds of services. Yet, they are told, no, you cannot do that. Why? There is no good explanation or justification for it—especially if we do this legislation in a way that is fair, open, and allows competition for all.

In stark contrast, the Telecommunications Competition and Deregulation Act of 1995—this bill—will move telecommunications into the 21st century and will finally leave the era of the Edsel behind. S. 652 will achieve this through full competition, open networks, and deregulation. That is what this bill is all about. That is what we say we we want. Senators stand up and say it day in and day out, about all kinds of situations. Well, in this bill, in this area, that is what we would do.

This bill provides a framework where entrepreneurs and free enterprise will make the information superhighway a reality, not just a conversation piece. As a result, tremendous benefits and applications will flow to our economy, to education, and health care. Industries will benefit from expanding markets and opportunities, and consumers will benefit from lower prices in their local, long distance, manufacturing, and cable services.

If one hears the protest of the various industries, it is not because the bill is too regulatory; no, just the opposite is true. It is because this bill removes all of the protection and market allocations that made their respective businesses safe and secure from the rigors of vigorous competition.

Under S. 652, all State and local barriers to local competition are removed upon enactment. An immediate process for removing line of business restrictions on the Bells is put in place. Moreover, the Bell companies are given the freedom to immediately compete out of region and provide a broad range of services and applications known as incidentals. These include lucrative markets in audio, video, cable, cellular, wireless, information services, and signaling.

The 1934 PUHCA is amended to allow registered electric utilities to join with all other utilities in providing telecommunication services, providing the consumer with smart homes, as well as smart highways.

Upon enactment, telephone and cable companies are allowed to compete. Current restrictions barring telephone cable entry are eliminated.

As the telephone/cable restriction is removed, S. 652, rightfully, loosens and removes cable regulation. For cable to convert and compete in the telephone area, it will be freed from the regulatory burdens that limit investment and capital capability, which has been a problem in recent years for the cable industry.

The restrictions placed on broadcasters, also during a bygone era, before cable, wireless cable, and advanced networks, would be reformed.

Ownership restrictions on broadcast TV are raised. An amendment removing restrictions on radio ownership will be adopted, and this is one we have worked hard on, and we have broad support now for. The FCC is granted the authority to allow broadcasters to move toward advanced, digital TV and to use excess spectrum, created by technological advance, for broad commercial purposes. Broadcast license procedures are reformed and streamlined.

S. 652, again, moving in from the communications policy of the past, goes from a protectionist policy to one appropriate for the global economy and technology of the 21st century. The bill promotes investment and growth by opening U.S. telecommunications markets on a fair and reciprocal basis.

In short, S. 652 constructs a framework where everybody can compete everywhere in everything. It limits the role of Government and increases the role of the market. It moves from the monopoly policies of the 1930s to the market policy of the future.

Toward that end, the removal of all barriers to and restrictions from competition is extremely important, and it is the primary objective, and I believe, the accomplishment of this legislation, thanks to the efforts of Chairman PRESSLER and the former chairman, Senator HOLLINGS of South Carolina.

In addressing the local and long distance issues, creating an open access and sound interconnection policy was the key objective, and it was not easy to come up with a solution that we could get most people to be comfortable with. It is critical to recognize the reason why all of these barriers, restrictions, and regulations exist in the first place—the so-called bottleneck. Opening the local network removes the bottleneck and ensures that all competitors will have equal and universal access to all consumers. Such access guarantees full and, I believe, fair competition.

The open access policy makes it possible for us to move to full, free-market competition in local and long distance services, avoid antitrust dangers, and dismantle old regulatory framework.

In fact, the Heritage Foundation makes the following statement and points to the open access interconnection policy:

Policymakers of a more conservative or free market orientation should not fear this open access policy. In fact, they should favor it for three reasons:

First, there is a rich, common law history that supports the open access philosophy.

They cite railroad and telegraph policy in America and common law tradition dating all the way back to the Roman Empire.

Second, open access works to eliminate any unfair competitive advantages accrued by companies that have benefited from Government-provided monopolies.

Third, open access removes the need for other regulations because the market becomes more competitive if everyone is on equal footing.

It is the only way to address economic deregulation where a bottleneck distribution system exists. It is the same policy which allows market forces, instead of regulation, to work in the case of long distance, railroads and in the oil and natural gas pipeline distribution system

# ATTACHMENT C

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

April 29, 1998

The Honorable John McCain
Chairman
Committee on Commerce, Science and
Transportation
United States Senate
508 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Hearing on Section 271 of the Telecommunications Act of 1996.

Dear Mr. Chairman:

This letter transmits my written responses to your post-hearing questions, as well as those of Senators Hollings, Stevens and Inouye, in connection with the hearing on the section 271 application process held on March 25, 1998 before the Senate Committee on Commerce, Science and Transportation. As you know, my responses and those of my fellow commissioners to Senator Brownback's questions on the 271 process were transmitted to the Committee under separate cover on April 22, 1998 at Senator Brownback's request.

I appreciate the opportunity that you, Senator Hollings, Senator Stevens, Senator Inouye and Senator Brownback have provided me to respond to these very important issues. As always, I would welcome the opportunity to discuss these issues and my responses with you or any other member of the Committee.

Sincerely,

William E. Kennard
Chairman

Attachment

**Questions Submitted by Senator Ernest F. Hollings, SC**

**Section 271, Interexchange Detariffing, International, Payphones, Section 253, Section 706**

Question 1: **The Telecommunications Act of 1996 set forth several requirements for Bell company entry into long distance. Before a Bell company is allowed to provide long distance, the FCC must find that the Bell company has implemented the 14 point checklist and that the application is in the public interest. Some parties believe that the competitive checklist reflects the needs of the carriers, while the public interest test reflects the consumer benefits of Bell entry. What is your perspective on the public interest analysis?**

Answer: In making a case-by-case determination of whether the public interest would be served by granting a section 271 application, we anticipate that we would examine a variety of factors in each case. Unlike the requirements of the competitive checklist, however, the presence or absence of any one factor will not dictate the outcome of our public interest inquiry.

In my view, the impact of BOC entry on consumers is an important aspect of the Commission's public interest analysis. Ordinary Americans will only see that competition is truly working when they can choose from as wide a variety of providers as the market will bear. The public interest requirement in section 271 affords the Commission an opportunity to consider whether the local market is sufficiently open such that consumers, particularly residential subscribers will have the opportunity to reap the benefits of competition because competitors have the opportunity to enter and serve them. The most persuasive proof that barriers to local competition have been removed is evidence of actual competition in the local market. Nevertheless, I recognize that there may be situations where residential entry is not widespread even though the BOC has opened its local market. In such instances, if the BOC satisfies all the statutory requirements, the lack of actual competition in the local market should not prevent BOC entry in the long distance market.

Question 2: **Does the FCC have a minimum time frame in which a Bell company is required to implement a collocation request? If so, what is it? Must collocation be tariffed by the States?**

Answer: The Commission has not established a minimum time frame a BOC must meet in providing collocation arrangements. Section 251(c)(6) requires a BOC to provide collocation arrangements on "rates, terms, and conditions that are just, reasonable and nondiscriminatory." I believe that, as part of the nondiscriminatory requirement, a BOC must provide collocation arrangements in a manner that provides an efficient competitor a meaningful opportunity to compete. In addition, the Commission recently proposed "model" performance measurements regarding the average time it takes incumbent local exchange carriers to respond to a request for collocation and the average time it takes to provision a collocation arrangement. Such information should assist in determining whether a BOC has met the statutory

carriers competing for their business to obtain more favorable terms for their 800 service. Long distance companies, in turn, may negotiate with payphone owners to lower the payphone compensation price. The long distance company could then use that advantage to attract more customers. Thus, once barriers to competition are removed, the market can ensure fair compensation levels by allowing parties to negotiate mutually agreeable rates.

The orders also specifically provide that the Commission retains discretion to review our deregulatory actions and evaluate whether marketplace dysfunctions in certain locational monopolies exist and should be addressed. Indeed, our orders ask the states to report to us any instances of such market failure and allow the states to request Commission action to prevent payphone abuses.

Question 15: **An 800/888 call is free to the calling party. This may provide an incentive for individuals to make such calls in an attempt to obtain greater revenues from their payphones. What is the potential for this type of fraud to occur and what can be done to minimize that potential?**

Answer: In its payphone orders, the Commission recognized the potential for such fraud. The Commission stated that, pursuant to its authority under the Act and its rules, it would aggressively take civil enforcement action against a payphone provider who deliberately violates the Commission's compensation rules by placing toll free calls simply to obtain compensation from carriers. Moreover, such an act may be fraud by wire and subject to federal criminal penalties. The Commission stated that, if it received information that a payphone provider was using its payphone for this purpose, or allowing someone else to use its payphone for this purpose, the Commission will refer the matter to the appropriate law enforcement agencies for criminal prosecution. The Commission also stated that it would continue to monitor developments in this area and respond to specific requests from carriers and payphone service providers.

Question 16: **Has the Commission received any complaints that state and local restrictions have prohibited municipal utilities from providing telecommunications services? How would such prohibitions be consistent with section 253?**

Answer: I am aware of one such complaint, filed by ICG Telecom Group. ICG Telecom Group withdrew its complaint before the Commission issued its decision in that proceeding. The Commission did not, therefore, decide the issue of whether section 253 precludes a state from prohibiting municipal utilities from providing telecommunications services. The Commission has, however, addressed the related question of whether section 253 precludes a state from prohibiting municipalities (as opposed to municipally-owned utilities) from providing telecommunications services. In the *Texas Preemption Order*, the Commission concluded that section 253 does *not* preclude the state of Texas from prohibiting its municipalities from providing telecommunications services. This holding is based on the determination that a municipality is not an "entity" separate and apart from the state in which it sits for purposes of applying section 253(a). This determination, in turn, derives from two

legal principles established by the U.S. Supreme Court: first, municipalities are not sovereign entities; and second, delegation of powers to municipalities is a core state function that Congress can regulate only if it does so clearly. Thus, the Commission concluded that, if Congress had intended section 253 to insert the Commission into the relationships between states and their political subdivisions, Congress would have done so expressly. The Commission noted that a state prohibition on its political subdivisions does not preclude private parties from entering the local exchange market through the various means contemplated by the 1996 Act, *i.e.*, resale, unbundled network elements, new facilities, and/or a combination thereof. The Commission encouraged states, however, to avoid enacting absolute prohibitions on municipal entry into telecommunications.

Should the Commission be called upon to review a state prohibition regarding municipal utilities, a threshold question would be whether the municipal utility is an "entity" within the meaning of section 253. If the answer to that question is yes, then subsection 253(a) generally condemns state restrictions that prohibit an entity from providing a telecommunications service, unless the state demonstrates that the restriction nevertheless is consistent with subsections 253(b) or 253(c).

Question 17: **Does the Commission believe it has the authority to forebear under section 706 from applying the requirements of section 271? In this regard, please note that section 10(d) precludes the Commission from forebearing from applying section 271 until section 271 has been fully implemented. Is there any basis for distinguishing between interLATA packet-switched networks and interLATA networks constructed for plain-old telephone service?**

Answer: We are currently considering these issues in the context of the Section 706 petitions filed by Bell Atlantic, U S WEST, and Ameritech. The Commission has requested public comment on the three petitions and thus far has received 63 initial comments from a variety of interested participants. Reply comments are due on May 6, 1998. Many parties that filed initial comments in the section 706 proceedings argue that section 10(d) precludes the Commission from forebearing from applying section 271 as the BOCs request. Although I do not want to prejudge a pending proceeding, I do agree that, at least on its face, section 10(d) appears to preclude the Commission from forebearing from applying section 271 until section 271 has been fully implemented and does not contain any express exception for section 706. I note that certain petitioners have suggested another approach that would enable BOCs to aggregate packet-switched traffic -- alter LATA boundaries for packet-switched services. I look forward to hearing the responses to these arguments. As a general matter, I intend to work with all parties, including the BOCs, to find ways to encourage the deployment of advanced telecommunications capability to all Americans. Because BOCs have made a significant investment in telecommunications infrastructure, I believe that they should participate fully in the provision of broadband services.

# ATTACHMENT D

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AFTERNOON SESSION

THURSDAY, MAY 21, 1998

(2:45 p.m.)

AGENDA ITEM NOS. 18, 19 & 20

PROJECT NO. 16251 - INVESTIGATION INTO SOUTHWESTERN BELL TELEPHONE COMPANY'S ENTRY INTO IN-REGION INTERLATA SERVICE UNDER SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. 19000 - RELATING TO THE IMPLEMENTATION OF SWBT'S INTERCONNECTION AGREEMENTS WITH AT&T AND MCI.

DOCKET NO. 16189 - PETITION OF MFS COMMUNICATIONS COMPANY, INC., FOR ARBITRATION OF PRICING OF UNBUNDLED LOOPS.

DOCKET NO. 16196 - PETITION OF TELEPORT COMMUNICATIONS GROUP, INC., FOR ARBITRATION TO ESTABLISH AN INTERCONNECTION AGREEMENT.

DOCKET NO. 16455 - PETITION OF SPRINT COMMUNICATIONS COMPANY, L.P., FOR ARBITRATION OF INTERCONNECTION RATES, TERMS, CONDITIONS, AND PRICES FROM SOUTHWESTERN BELL TELEPHONE COMPANY.

DOCKET NO. 17065 - PETITION OF BROOKS FIBER COMMUNICATIONS OF TEXAS, INC., FOR ARBITRATION WITH SOUTHWESTERN BELL TELEPHONE COMPANY.

CHAIRMAN WOOD: All right. We'll go back -- the Commission will come back on the record to take up Items 18, 19 and 20 on today's agenda sequence. Item 18 is Project 16251, Investigation of Southwestern Bell Telephone Company's Entry Into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996.

Before we join in visiting with the staff, do any of you-all have anything you'd like to kind of start off with?

COMM. CURRAN: Well, I've got an opening statement before we get into everything.

COMM. WALSH: I do, too.

COMM. CURRAN: And I think Commissioner Walsh does too. So would you like to go first?

CHAIRMAN WOOD: Great.

COMM. WALSH: I find that Southwestern Bell has not yet met the requirements for in-region interLATA authority under Section 271.

In regard to the issue about Track A, whether there is a competing facilities-based provider to satisfy Track A I think is debatable, given the minuscule number of residential and business customers served. The de minimis rule becomes an issue. So does whether any of these providers is or can become a true competitive alternative to Southwestern Bell in light of Southwestern Bell's lack of cooperation and efforts to frustrate the CLEC's efforts to enter the market.

The public interest, which is the last issue -- whether Southwestern Bell's entry into long distance is in the public interest is to be determined after the 14 points are met. The record is replete with examples of Southwestern Bell's failure to meaningfully negotiate, reluctance to implement the terms of the arbitrated agreements, lack of cooperation with customers and evidence of behavior which obstructs competitive entry.

As a result, we do not have an open market today with Section 271 as an incentive. The very real danger is that if Southwestern Bell were granted 271 relief now, they would have no incentive to cooperate with CLECs, and the local market in Texas might never be competitive.

I do not find it in the public interest to support the 271 application today, but I do not believe that we need to reach the Track A or the public interest issues today because the 14 points have not been met, and if we work on curing these deficiencies, then there will be competitive alternatives, and track A will likely be satisfied.

If the 14 points are ultimately met, and if Southwestern Bell is able to adjust its corporate culture to treat the CLECs as valued customers rather than annoying competitors, then the reservations concerning the public interest may also be removed.

So I would propose that we focus on the steps necessary to meet the checklist, but the evidence of uncooperative behavior to date and the difficulties CLECs have had in establishing a competitive foothold as reflected in the dearth of facilities-based customers has

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multiple entry of data, disconnection between pre-ordering and ordering, ability to process change orders, high fallout rates, access to numbers and availability of timely and complete billing information must also be resolved.

In connection with performance measures, we must adopt a complete set of performance measures to address all parity issues. They must be available to all CLECs and provide aggregate and individual CLEC comparisons. There must be a sufficient period of actual measurement of data to ensure that the measures are effective and to establish whether or not Southwestern Bell is in compliance with the parity requirements. The measurement period, I think, should be at least three months. There must be self-implementing penalties that do not allow for selective discrimination and which are large enough to be a deterrent.

To mitigate against deterioration after 271 relief is granted, I would recommend that a serious failure to

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continuously meet the performance measures would result in a freeze of the right to solicit in-region interLATA customers.

In connection with the 272 affiliate transaction issues, I continue to be concerned that competitive affiliates, like Call Notes, are not providing the same service to customers who are served by CLECs as they do to Southwestern Bell customers. I think any activity on this part is a significant barrier to entry.

I'm also concerned about the level of detail of data required in reporting by the long distance company SBLD. I think the reports must be readily available and capture relevant data to identify cross-subsidies and anticompetitive activity.

When a BOC and a long distance company affiliate choose a simple structure, then I think the reporting can be pretty straightforward, but in a corporate structure which is as complicated as this one is and when there are three separate BOCs -- and maybe more --

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conducting transactions with one or more long distance subsidiaries that do business in-region and out of region, I think following the flow of transactions becomes a lot more complex.

Going back to the issue of doing business with Southwestern Bell in the public interest, I think that, to date, Southwestern Bell has been a reluctant participant in opening the local telecommunications market to competitors. I fully support the development of an instruction manual that gives CLECs complete information on the steps necessary to accomplish all required transactions with Southwestern Bell. I would also require Southwestern Bell to come up with concrete steps for changing the corporate culture to treat CLECs as valued customers. Any such change must be embraced from the top of the organization, acted upon and communicated downward throughout the entire organization to account representatives, repairmen and employees at the LSC.

Particular areas to be addressed

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would be training for all employees who deal with retail customers and CLECs, developing protocols of what service reps can say and do in contacts with customers, structuring information flow from the policy group to account reps and to CLECs so that policy decisions are universally known, establishing incentives for employees based upon CLEC satisfaction and developing an appeals process or ombudsman within Southwestern Bell itself for CLECs to appeal decisions made by the account reps.

At the end of the collaborative process, I think we should have a new survey of CLEC satisfaction to see where we stand in terms of the ease of doing business with Southwestern Bell, and I think at that time the hearing should be reconvened to take supplemental testimony on CLEC experiences to evaluate the real world with the 14 points and the public interest.

CHAIRMAN WOOD: Pat?

COMM. CURRAN: First of all,

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I wanted to thank the parties to this proceeding for developing an exhaustive record. It was -- not only, I think, were the issues developed well, but it was informative and educational, and I appreciate that.

The focus in this proceeding and the Staff's comments may very well be directed at things that Southwestern Bell has either done or not -- well, has either not done or has not done well. That is due in large part to the nature of this proceeding. However, there's also evidence in the record that Bell is complying with the majority of the provisions of most interconnection agreements.

In addition, during this investigation process, Bell has agreed to a number of suggestions and recommendations. While competition is not as robust as perhaps it should be by this point in time, it's evident that Bell has come a ways since the first arbitration. While it does not -- while I do not believe that competition is at a sufficient level today

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to allow Bell to enter the long distance market, my hope is that the comments that we and the Staff will make today and as a result of the collaborative process that will be recommended -- that Bell will be able to enter the long distance market by following the road map that I hope that we are able to give you.

Even when Bell meets the checklist items, there are still some concerns which lead me to the conclusion that Bell has not met its burden necessary to recommend that it be allowed to enter the long distance market. Those concerns arise under the Track A requirement and the question of whether Bell's application is in the public interest.

On the Track A matter, I have two major problems with any conclusion that Bell has met the Track A requirements. First is the issue of whether it has entered into binding agreements. Secondly is my conclusion that the cumulative number of access lines served by Bell's competitors is insufficient to establish

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them as competing providers.

Track A requires that Bell have entered into one or more binding agreements that have been approved specifying the terms and conditions under which it is providing access and interconnection. While Bell has entered into scores of agreements, certain of Bell's actions indicate that it doesn't consistently view all agreements as binding in nature. It has challenged a number of the terms of arbitrated agreements in court proceedings. These legal challenges indicate to me that Bell is not committed to perform under the disputed terms of the agreement, if it can prevail. Its legal challenges, if successful, may render some or all of the disputed terms of the executed agreements void or voidable. These are not characteristics of what is generally understood to be a binding agreement. They also cast serious doubt about the future performance under these agreements.

Certainly Bell has a legal right to exhaust its remedies in court. The

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problem such appeals create, however, is the uncertainty in the business arrangement and the impression that it is using the legal process, not to protect its rights, but to thwart the process itself. While the Commission cannot deny Bell its legal remedies, Bell might consider withdrawing some of its pending lawsuits involving disputed interconnection agreements. Such a voluntary offer would alleviate the uncertainty in the business arrangements and would assure the binding nature of existing contracts and would be one indication of Bell's commitment to the competitive marketplace.

Another example of what I consider to be Bell's lack of commitment to the binding nature of certain arbitrated agreements it has executed is its refusal to apply the Commission's rulings in one agreement to all similarly situated agreements. For example, we learned in this hearing that, despite the Commission's clear interpretation that reciprocal compensation provisions apply to ISP

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traffic, Bell failed to apply the ruling to identical provisions in other existing contracts. I understand that Bell has now agreed to abide by the Commission ruling in the Time Warner and Waller Creek proceeding and to apply that ruling to all current contracts involving ISP. I would like to and would expect to see the same continuity in other contested provisions. Nevertheless, until Bell shows a consistent policy of applying Commission rulings across the board and a commitment to perform in accordance with the terms of all agreements without constant Commission supervision, I cannot reach the conclusion that binding agreements have been entered.

Track A also requires that these binding agreements be with one or more unaffiliated competing providers of telephone exchange service. The question is, therefore, what constitutes a competing provider? Neither the Act, nor the FCC, require a showing that a competitor or competitors have secured any minimum percentage of market share away from Bell.

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However, it stands to reason that to meet the requirement that other providers -- to meet this requirement, other providers must have secured more than a de minimis number of customers.

Here we have a situation where potential competitors have spent enormous time and effort and probably enormous sums of money attempting to gain a foothold in the local telephone market. The regulatory agency has spent untold hours in an effort to establish mechanisms under which the phone customers of Texas will have choice in their local phone service, and this enormous effort has resulted in a movement of just 1 percent of phone customers to competitors. I don't believe the record supports the explanation that this is the result of a lack of interest, either on the part of consumers or on the part of potential competitors.

The 15 CLECs relied upon by Bell to demonstrate there are competing providers I believe simply do not yet rise to the level of providing real competition

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to Bell or true commercial alternatives to a sufficient number of phone subscribers in the state. However, on this issue, I would be willing, assuming that the checklist is met and the other public interest issues are met -- I would be willing to set forth the record evidence on this matter and let the FCC decide if it believes a de minimis number of lines in the hands of competitors is sufficient to meet this requirement.

This brings me to the question of whether I believe Bell's application is in the public interest. At this time, I do not believe it is. With the facts before us, I do not believe there is any way to conclude that, in Texas, there is a situation of irreversible local competition. Currently, there are CLECs with de minimis customers, and even those de minimis customers have been secured only with tremendous effort and with Bell resisting at every turn. Will these CLECs and other CLECs be able to retain even this level of customer base into the future, much less to provide a real competitive

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option to additional subscribers? Under current practice, it is highly doubtful.

A critical factor to me as well -- and I mirrored Commissioner Walsh's comments on this -- is the term of the contracts. The terms of both the arbitrated and negotiated contracts are for relatively short periods of time. CLECs who have MFNed into existing contracts appear to be forced to adopt the agreement with whatever remaining term exists in the original contract as opposed to even being allowed to secure the same original term as the original party. I find this fact very troubling.

At the end of the term, it is unclear what, if any, right the CLEC will have to expect a continuation of service from Bell, pending the outcome a new agreement. Presumably, once the contract expires, Bell has no obligation to continue providing service until a new contract is executed. This potential termination or disruption in service has obvious business implications for competitors. In order to

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achieve a truly competitive marketplace, there must be some assurance from Bell that as to these interconnection agreements, as they expire, that it will continue to operate under the terms of those agreements until new contracts are in place, and to the extent that these agreements require arbitration, the period between the expiration of the current contract and subsequent contracts could be significant.

Moreover, if Bell is already in the long distance market, it will have far less incentive to complete subsequent contract negotiations in a timely manner. In order to expedite future contract negotiations, we could consider the development and adoption of default contracts for various types of interconnection agreements, such as resale or UNE agreements. These default contracts would be available to CLECs without the necessity of any additional negotiations. The provisions of these agreements could be developed through the collaborative process and could be based on sections of

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agreements that Bell has already agreed to provide on an MFN basis. For instance, these agreements could include the performance measures attachment as well as provisions of the physical collocation tariff.

Parties selecting a default contract could always negotiate additional terms, but any CLEC entering into an agreement with Bell for the first time or for a subsequent contract period could take advantage automatically of these basic minimum terms. These default agreements could be considered as a substitute for Bell's generic contracts, which they now use to start the negotiation process.

It has been suggested that we could recommend to the FCC that conditions be placed on Bell's entry into the interLATA market. That's all fine and good. However, from a real life point of view, I don't believe that's a realistic remedy if the future -- if, in the future, Bell shows a lack of commitment to the competitive process. Once Bell is in the

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market, there may be enormous pressures from all sorts of sources, including the consuming public, to allow it to remain in the long distance market without restriction, even at the expense of competition. A preferable approach in my mind is to assure that -- to assure that robust competition exists before Bell enters the market. Hopefully, that is what a collaborative process can achieve, but by being as specific as possible in providing Bell a road map or outline of what is necessary to obtain a positive recommendation from this Commission, hopefully such conditional entry will not be necessary.

Finally, with regard to the public interest, no matter what safeguards and protective measures we recommend, we cannot be assured that competition will become irreversible in Texas until Bell is committed to treating CLECs as customers rather than as competitors. This change in business attitude is entirely within Bell's power. This Commission cannot order Bell

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to change its attitude. We can, however, provide concrete actions; steps which we believe will result in an open market. But Bell can change its attitude, and it can do that by demonstrating good faith in its negotiations and dealings with CLECs on a going-forward basis. It can demonstrate this good faith by removing barriers that it has put in place and by its commitment to institutionalize clear and non-discriminatory procedures to allow CLECs entry into the market and to sustain new customer relationships.

In addition, Bell can demonstrate its change in attitude by participating in good faith in the collaborative process that I think we'll be discussing throughout the rest of the day. This process, I believe, will remedy the deficiencies that are likely and that we will be discussing and be noted in today's deliberations in Bell's application, and hopefully we'll be able to put in place a mechanism that will assure a truly competitive market in Texas.

CHAIRMAN WOOD: I would

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not a general fishing expedition for everything else.

But having said that, I think there's a long history in litigation and a long history in administrative law that if there is a way to spare CEOs from having to be pulled into -- and away from running their businesses and pulled into these things, if there's a way to get information and to get evidence from some other reliable source, that that should be done. And it seems to me that here there have been depositions of the -- of the individuals on the other side of those telephone conversations, and there's certainly no evidence that I've seen that there's any reason to doubt the veracity of the information obtained, so I don't see the necessity of deposing Mr. Whitacre. And so I would grant the appeal.

CHAIRMAN WOOD: I also added that I guess -- I've kind of been thinking a lot about this issue in the last week and I've kind of gone all over the map. My initial thought was on the fishing expedition issue, that it was a bit -- left a little bit broad

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here, and so Monday I voted to add. I've since read the entire depositions from Mr. Laskawy -- or Laskawy and Mr. Spiropoulos. And in light of what we just did, I mean, I think one of the -- one of the things that -- and it's in the -- in the full draft of the staff recommendation is we said that the corporate attitude and the corporate behavior wasn't right.

This evidence here, to me, if the company doesn't wish to rebut it more than what they've done on their pleadings, stands as it is, and I think it is -- is pretty damning. But I don't think it's damning quite for the same reason that the parties on either side allege or disavow. I think it's damning because OSS is not a contested issue. Getting AT&T to get its EDI up and operational is something you ought to bend over backwards to make happen. And the fact that it's deemed by -- by your company and your advocacy, to be fair, Mr. Kridner, and on the other side as well, from AT&T, that this is a point of contention bugs me a lot deeper than, you know, what Ed Whitacre did or didn't do over

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the telephone, because this is an issue that is not a contested issue. This commission has decided it. I don't notice that needing AT&T to do EDI at the elemental level is in any pleading. Although everything else seems to be pled to the court, that's not one I see in the pleadings, that we need to get AT&T hooked up to the EDI.

So the fact that Ernst & Young, who in a wonderful full-page ad, which to me is not a bug caught between the reels, if you can afford to pay the Wall Street Journal for a full-page ad, says that there isn't a business we can't improve, which is their sig line here on the bottom, I wonder if the business they understand. I mean, obviously, they wouldn't have been hired unless they were -- were qualified to do this, but the fact that they can't understand that this is not a contested issue, that this is an issue that needs to be resolved to help Southwestern Bell get what it wants, and that's what disturbs me fundamentally.

A week ago, this was relevant. That's the standard. In discovery, is it

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relevant? It's relevant. We've ruled today, in my mind. We've determined that there are violations of the public interest, one of which is the corporate behavior and attitude of Southwestern Bell, and I think unrebutted the -- the testimony I don't think requires a malicious intent. I'm not going to impute that in there. And I think, however, whether it's found or not, the point that AT&T alleges is largely proven, that there is an interference here that -- that is not indicative of a company that is interested in getting local competition off and operating in this state.

Having basically, I guess, given the -- the company the relief it sought, which is a finding that this -- the public interest has been not upheld by Southwestern Bell by this activity, regardless of intent, I think the actions of the activities speak for itself. I kind of think it's -- it's -- it's now moot.

I think the judge was right, it is relevant, the man should have been deposed. I think in -- in the -- the doctrine that you

# ATTACHMENT E

**Hearings on S.1822 Before the Senate Committee on Commerce, Science and Transportation, 103d Cong., 2d Sess. 351-60 (1994)**

A&P HEARINGS S. 1822
Hearings, 103rd Cong., 2d Sess.
**(Cite as: A&P HEARINGS S. 1822)**

Arnold & Porter Legislative History: P.L. 104-104

HEARINGS

S. 1822, THE COMMUNICATIONS ACT OF 1994

HEARINGS BEFORE THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE
February 23, 1994 and

March 2, 1994 and

March 17, 1994 and

May 4, 1994 and

May 11, 1994 and

May 12, 1994 and

May 18, 1994 and

May 24, 1994 and

May 25, 1994

*II COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, Chairman

**Hearings on S.1822 Before the Senate Committee on Commerce, Science and Transportation, 103d Cong., 2d Sess. 351-60 (1994)**

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STATEMENT OF WILLIAM RAY, GENERAL MANAGER, GLASGOW ELECTRIC PLANT BOARD

Mr. RAY. I can certify that I will be a similar nonexpert, Mr. Chairman.

As you stated, I am William Ray. I am the superintendent of the Glasgow Electric Plant Board in Kentucky. I am testifying today on behalf of the American Public Power Association. As you know, APPA is the national service organization representing more than 1,750 local public power systems throughout the country.

APPA supports S. 1822. We think it is an excellent starting point for the development of the national information infrastructure. And while there are many provisions, from APPA's perspective, there two sections of 1822 that deserve special mention and that we are especially happy with. Section 103 that requires all telecommunications carriers that use public rights-of-way to offer preferential rates to a range of public institutions, including State and local governments, and section 302, which recognizes the right of electric and other utilities to provide telecommunications services.

Now, that is a giant step there. The first will benefit citizens in every community throughout the country. The second provision explicitly recognizes the legitimate role and interest electric utilities have in developing the national information infrastructure.

APPA has some suggestions for improvements to the legislation. Specifically, we recommend that section 302 be amended to specify that any usual, customary, and nondiscriminatory fees or conditions imposed by State or local government on the use of public poles, conduits, ducts, and rights-of-way, are not considered to be barriers to providing interstate or intrastate communications. And that section 302 also be clarified to ensure that the provision prohibiting unreasonable discrimination among telecommunications carriers by State and local governments is not construed to prevent or impair the leasing of excess capacity from a publicly owned communications system on a private carriage basis.

Now, all electric utilities, whether owned by units of State or local government, organized as electric cooperatives, or owned by private investors, are ideally positioned to play a role in the construction of the NII. Electric utilities have the infrastructure in place to develop the NII. We have the ethic of universal service.

We have the killer application and, you know, that is what most of the phone companies and the cable companies are out casting for. We have got it, and that is deferring the construction of new generating plants because we use this information system to make what we have got work better.

Through our participation we can ***352** inject an additional element of competition in the delivery of telecommunication and information services.

While all electric utilities have telecommunications needs, the manner in which these needs are met differs greatly among different public power systems. Now, some public power systems will lease communications facilities from others, some will build facilities simply to meet their own communications needs, still others will build facilities with excess capacity and lease that capacity to third parties.

And, finally, some will do like Glasgow has done, and see telecommunications services as just an extension of other utility services such as electric, water, and sewer, and we will sell the services directly to the consumer. No matter what course they pursue, APPA's goal is to ensure that legislation ensures equal and fair access to the information superhighway and will not impose unreasonable or unjustified obstacles in the path of potential developers of the NII, including, of course, public power systems.

APPA members bring additional assets to the table. Perhaps the most important of these is the very real, competitive pressures we have injected already in the electric utility industry and which we are likely to add to the telecommunications industry. I would like to summarize briefly the benefits that my community has enjoyed from my utility's entry into the field of telecommunications.

We built our system initially to do demand-side management, and actually not just demand-side management, but to better operate our electric utility and, quite bluntly, to decrease the bite that TVA took out of my community every month in the form of the wholesale power bill. We have proven, just with crude experimentation in a small town in south central Kentucky, that 2- or 3-KW-per- home reduction in peak demand is achievable.

Now, that is what I call the killer application. You know, in terms of replacing that reduction in demand with construction of generating capacity, that is a value, depending on what part of the country you are in, of $3,000 or $4,000 per home.

We also, while we were building our system, put competitive cable television service on it. You have heard that story before, although I like to tell it. The competition for cable TV in Glasgow has resulted in rates-whether you subscribe to the municipally owned system or the privately owned system, that average $18 a month less than what you are going to pay in a community where there is no competition. So, we consider that a success.

We forgot to worry about all the potential problems that might arise from developing competition. We just went ahead and did it. We have now been able to introduce competition for telephone service. We use our same system to offer, as far as I know, the only competitive dial tone in the country, where the people in Glasgow can buy their dial tone from GTE or they can buy it from the city of Glasgow. It is too early to tell exactly what the results of that competition are going to be, but if our history of competition in cable television is any predictor of the future, we think the benefits will be significant.

We sell data service. We can-any home in town can access a local area network with speeds approaching what the telephone company calls T-1. The telephone company calls it T-1 and generally ***353** charges $1,000 or $1,200 a month for it. We charge $19.95 for it.

We have also been able to synchronize all our traffic signals in town, which really adds the possibility of demand-side management for a whole different area of services. Demand-side management is not just for electric utilities. By synchronizing all the traffic signals in town and improving traffic flow, we have learned how to do demand-side management on our streets and highways.

There is another option. When streets are crowded you do not always have to build wider streets; you can figure out a way to reduce the demand and get some of the vehicles off. And that is what close synchronization of traffic signals can do, and that is just what we have discovered in Glasgow with our crude system and using our own money to try to do R&D. And we think that is only scratching the surface of what competition can do, and I just want to, again, reiterate our joy that this bill specifically recognizes electric utilities as players in this.

Thank you.
[The prepared statement of Mr. Ray follows:]

## PREPARED STATEMENT OF WILLIAM J. RAY

Mr. Chairman and Members of the Committee, my name is William J. Ray, and am Superintendent of the Glasgow, Kentucky, Electric Plant Board. I am appearing today on behalf of the American Public Power Association, the national service organization representing more than 1,750 local, not4or-profit, publicly owned electric utilities. APPA appreciates this opportunity to testify on the National Information Infrastructure (NII) in general, and S. 1822 in particular.

## SUMMARY OF APPA POSITION ON S. 1822

APPA not only recognizes the many public benefits to be gained by construction and implementation of a national information infrastructure, many of its members expect to be active participants in construction and operation of the NII. Attached is a resolution adopted by APPA's Legislative and Resolutions Committee in January, setting forth the association's position on NII policy.

APPA supports S. 1822. It is an excellent starting point for development of the NII. There are several sections that deserve special mention:

. Section 103 requires all telecommunications carriers that use public rights of way to offer preferential rates to a range of public institutions, including state and local governments;

. Section 302 recognizes the right of electric and other utilities to provide telecommunications services; and

. Section 501 makes it clear that any local exchange carrier that provides video programming is subject to all the provisions of Title VI of the Communications Act of 1934, as amended ("the Act"), including the requirement to obtain a local franchise.

Changes in other sections could improve the legislation in ways that would enhance competition and promote universal service. Specifically:

. The definition of telecommunications services in Section 301 should be amended to clarify that it does not include leasing, on a private carrier basis, communications facilities to a third party;

. Section 302 should be amended to specify that any usual, customary and nondiscriminatory fees or conditions imposed by state or local government on the use of public poles, conduits, ducts and rights-of-way are not considered to be barriers to providing interstate or intrastate communications; and

. Section 302 should also be amended to prevent the provision prohibiting unreasonable discrimination among telecommunications carriers by state and local governments from being constructed to prevent or impair the leasing of excess capacity from a publicly owned communications system on a private carriage basis.

## UTILITY ROLE IN DEVELOPMENT OF THE NII

All electric utilities, whether owned by units of state or local government, organized as electric cooperatives, or owned by private investors, are ideally positioned ***354** to play a role in the construction of the NII. Electric utilities have the infrastructure in place to develop the NII, they have the ethic of universal service, and through their participation they will inject an additional element of competition in the delivery of telecommunications and information services.

Utilities have the greatest single industry requirement for "real-time" communications capabilities in the nation. To meet these information and system command-and-control needs, utilities have constructed sophisticated communications networks that include virtually all of the media that will be incorporated into the NII-fiber optic cable, coaxial cable, twisted pair copper wire, microwave trunked land/mobile radio systems and power line carrier. One APPA member, City Utilities of Springfield, Missouri, even has an experimental license from the Federal Communications Commission to incorporate personal communications services into its municipal communications system. Current estimates of the utility industry's operating expenditures for telecommunications range from $2 billion to $4 billion annually, growing by 25 percent or more each year.

The "traditional" elements of the telecommunications industry-local exchange carriers, alternative service providers and interexchange carriers in the telephone industry, and cable television systems-have not only taken notice of the electric utilities' telecommunications infrastructure, they have made extensive use of these facilities. According to the FCC's 1993 Fiber Deployment Update report, utilities provide in excess of 100,000 miles of fiber optic cable to communication carriers, either as primary circuits or redundant (backup) capacity.

The demands of the electric utility industry for telecommunications and information services are expected to increase in the future in order to implement energy conservation programs and to enhance the control, reliability and responsiveness of electrical service to the public, in the wake of the competitive environment formalized by the Energy Policy Act of 1992. Efficient operation and survival in a more competitive environment are driving utilities to develop new and enhance older communications networks. Computers and microprocessors will play an increasingly important role in improving distribution efficiency. Advanced distribution devices based on modern power electronics will replace mechanical devices that control power flow on distribution systems. Computer technology will make real-time pricing a reality in the near future. Sophisticated communications networks will be essential for utilities to capitalize on these investments.

Concurrent with the expansion of utility communication needs is the convergence of what has been to this point discrete communications services or markets. Thus, the communications facilities needed by utilities for load management and control operations are the same facilities that will carry telephone conversations, cable television entertainment and permit interactive communications.

Because the public, private and cooperative segments of the electric industry share this need for sophisticated, high-speed telecommunications and information systems, they have joined together, along with their public and private counterparts in the water and gas utilities, to form the Utilities Telecommunications Council (UTC). UTC develops and advocates the consensus positions of the utility industry on telecommunications policy. Other witnesses on today's panel have set forth these utility industry views on S. 1822 on behalf of UTC, and APPA endorses these consensus positions.

## PUBLIC POWER'S INTEREST IN THE NII